

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DAVID NATHANIEL ROBERTS,
Plaintiff,
v.
LYNCH, et al.,
Defendants.

No. 2:20-cv-1349 WBS DB P

FINDINGS AND RECOMMENDATIONS

Plaintiff, a state prisoner, filed this pro se civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff claims defendants violated his rights by improperly taking funds from his prison trust account and withholding his legal mail. Plaintiff filed a motion to proceed in forma pauperis, which the court granted. (ECF Nos. 2, 9.)

On June 2, 2023, defendants moved to revoke plaintiff's in forma pauperis status. (ECF No. 37.) By order dated October 4, 2023, the District Court determined that plaintiff accrued three strikes under 28 U.S.C. section 1915(g) prior to filing the instant case and had not shown he was in imminent danger of serious physical injury at the time he filed the complaint.¹ (ECF No.

¹ On August 24, 2023, the undersigned issued findings and recommendations recommending that this case be dismissed for failure to prosecute and failure to comply with court orders, and that the motion to revoke plaintiff's in forma pauperis status be denied as moot. (ECF No. 40.) In its October 4 order, the District Court acknowledged the undersigned's recommendations, but opted to rule on defendants' motion to revoke plaintiff's in forma pauperis status. (ECF No. 44 at 2.)

44.) Plaintiff was ordered to pay the filing fee within thirty days and warned that failure to comply would result in dismissal. (Id.)

Those thirty days have passed, and plaintiff has not paid the filing fee. Accordingly, the undersigned will recommend this action be dismissed without prejudice.

For the foregoing reasons, IT IS RECOMMENDED that:

1. This action be dismissed without prejudice; and
2. The Clerk of the Court be directed to close this case.

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty (20) days after being served with these findings and recommendations, plaintiff may file written objections with the court and serve a copy on all parties. Such a document should be captioned “Objections to Magistrate Judge’s Findings and Recommendations.” Plaintiff is advised that failure to file objections within the specified time may waive the right to appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

Dated: November 22, 2023


DEBORAH BARNES
UNITED STATES MAGISTRATE JUDGE

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